

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Smith et al.

Serial No.: 10/804,331

Filed: March 19, 2004

For: ***ALPHAVIRUS REPLICONS AND HELPER CONSTRUCTS***

Confirmation No.: 7017

Group Art Unit: 1648

Examiner: B. Blumel

Date: April 10, 2008

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**COMMUNICATION REGARDING EXAMINER'S AMENDMENT**

Sir:

This Communication is being submitted pursuant to telephone correspondence between Examiner Benjamin Blumel and applicants' representative, Dr. Mary Miller, on April 7, 2008 and on April 9, 2008. Specifically, the Examiner indicated that the pending claims appear to be in condition for allowance with some amendments he has proposed that he will introduce via an Examiner's Amendment.

As discussed, applicants agree to the following amendments.

1) The addition of the phrase ", which is in 5' to 3' orientation" between "cassette" and ";" in Item c of claim 1; between "cassette" and ";" in Item b of claim 48; and between "cassette" and ";" in Item c of claim 58.

1) The addition of the word "isolated" between "A" and "cell" in claims 49, 79, 80 and 81. Applicants believe that claims 49, 79, 80 and 81 are patentable without this amendment and are agreeing to this amendment proposed by the Examiner only to expedite prosecution of the pending claims to issue. Applicants expressly reserve the option to continue prosecution of claims 49, 79, 80 and 81 as originally presented in a continuation application.

2) The Examiner pointed out that claims 23, 24 and 46 depend from a higher numbered claim and renumbering of the claims to address this is requested. Attached hereto is a listing of the pending claims, renumbered accordingly.

3) As it is applicants' understanding that the recombinant replicon nucleic acids of claims 1 and 19 are deemed novel and unobvious over the art and that therefore a method of making infectious, defective alphavirus particles using the replicon nucleic acids of claims 1 or 19 as set

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forth in respective claims 37, 47, 82 and 91 is novel and unobvious, applicants would like to add the following new claims, on the basis that the particles produced by the methods of claim 37 and 47, which comprise the nucleic acid of claim 1, as well as the particles produced by the methods of claims 82 and 91, which comprise the nucleic acid of claim 19, are also novel and unobvious:

94. (New) An infectious defective alphavirus particle produced by the method of claim 37.

95. (New) An infectious defective alphavirus particle produced by the method of claim 47.

96. (New) An infectious defective alphavirus particle produced by the method of claim 82.

97. (New) An infectious defective alphavirus particle produced by the method of claim 91.

The Examiner is encouraged to contact the undersigned directly at 919-854-1400 if such contact will expedite the allowance of the pending claims.

No fee is believed due with this Communication. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

**USPTO Customer No. 20792**  
Myers Bigel Sibley & Sajovec, P.A.  
P. O. Box 37428  
Raleigh, North Carolina 27627  
Telephone: (919) 854-1400  
Facsimile: (919) 854-1401

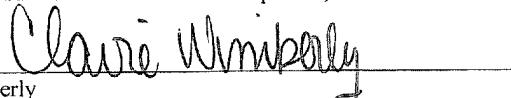
Respectfully submitted,



Mary L. Miller  
Registration No. 39,303

**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on April 10, 2008.

Signature:   
Claire Wimberly